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9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 **JAMES LIGON,**

13 Plaintiff,

14 **v.**

16 **JOE LAFAUCI,**

17 Defendant.

5:13-CV-02875 RMW

**DEFENDANT'S TRIAL BRIEF**

Date: January 15, 2015  
 Time: 2:00 p.m.  
 Courtroom: 6  
 Judge: Hon. Ronald Whyte  
 Trial Date: February 2, 2015  
 Action Filed: June 21, 2013

19 **INTRODUCTION**

20 This civil rights and personal injury lawsuit arises from the June 21, 2012 shooting of  
 21 plaintiff James Ligon by Defendant Joe Lafauci, an officer with the California Highway Patrol  
 22 ("CHP"). The shooting followed an attempted enforcement stop for speeding; a pursuit on the  
 23 freeway, commercial and residential areas; and an altercation between Plaintiff and Defendant.  
 24 Plaintiff alleges violation of his civil rights pursuant to 42.U.S.C. § 1983, and state law claims for  
 25 negligence, assault and battery and intentional infliction of emotional distress. Defendant Lafauci  
 26 contends his actions were justified based on the circumstances. After the pursuit, plaintiff James  
 27 Ligon got out of his car without being instructed to do so. Within two seconds, he charged  
 28

1 directly at Officer Lafauci while yelling threats and refusing Lafauci's commands to "stop",  
2 "show your hands" put his hands up and "get down."

### 3 **STATEMENT OF FACTS**

4 On June 21, 2012, CHP Officers Joe Lafauci and Cory Walczak were conducting traffic  
5 enforcement on southbound Highway 101 near University Avenue in Palo Alto, CA. At  
6 approximately 1:18 a.m., they clocked plaintiff James Ligon driving over 80 MPH in his Toyota  
7 Corolla. Officer Lafauci caught up to Ligon north of the San Antonio Road exit and initiated the  
8 traffic enforcement stop using his solid red lights. Mr. Ligon went to the right lane, but did not  
9 stop. Officer Walczak used the public address system ("P.A.") to direct Ligon to take the exit at  
10 Rengstorff Ave., but Ligon ignored the instruction. Officer Lafauci positioned his car to the  
11 driver's side of Ligon's car so that Ligon could better hear the P.A. Ligon continued to refuse  
12 instructions to take the next four exits -- Shoreline Blvd., Highway 85, Moffett Blvd, and Ellis St.

13 As they crossed over Ellis Street (3 miles after turning on the forward red light), Officer  
14 Lafauci pulled directly behind Mr. Ligon and initiated his Code 3 siren and flashing blue and red  
15 emergency lights. Ligon drove 65 to 70 MPH for another 1.2 miles before exiting at Mathilda  
16 Ave. Ligon immediately crossed the four lanes of Mathilda and turned left on Ahwanee Ave. He  
17 made a right turn into a Denny's parking lot, cut through the lot and passed the adjacent motel.  
18 Ligon proceeded to exit the lot and turned left onto San Aleso Ave., a commercial and residential  
19 street behind the motel. Ligon then reconnected with Ahwanee Ave., ran two stop signs, and  
20 turned right onto Alturas Ave. A few seconds later, Ligon abruptly pulled into a red zone with  
21 fire hydrant near 277 Alturas Ave. The officers were close behind with their Code 3 lights and  
22 siren.

23 Due to Mr. Ligon's abrupt stop on Alturas, Officer Lafauci stopped about 20 feet behind  
24 Ligon (rather than the 30 feet trained by CHP). Based on Ligon's evasive actions and failure to  
25 yield, the officers prepared for a high risk stop as outlined in the Highway Patrol Manual. Officer  
26 Lafauci got out of the driver's side door and drew his gun. Officer Walczak got out with radio in  
27 hand ready to instruct Ligon, but Ligon got out of his car as soon as he pulled over so Walczak  
28 threw the radio to his seat. Officer Walczak did not draw his firearm as he was preparing to chase

1 Ligon on foot. Walczak prepared to draw his Taser.

2 Within two seconds of getting out of his car, Ligon moved diagonally towards the middle  
3 of the street with his hands in front of him near his waistband and charged directly at Officer  
4 Lafauci. Officer Walczak testified that Ligon's movement was like a "quick sprint." Officer  
5 Lafauci, who had his gun drawn, immediately commanded Ligon to stop, "get down", "show his  
6 hands", and put his hands up. Ligon ignored the instructions, and continued to charge Officer  
7 Lafauci (while making a football style "jucking" movement), and yelled that he was "running at"  
8 and "coming to get" Lafauci.

9 Officer Lafauci retreated towards the back of his car while yelling the same commands at  
10 Ligon. Ligon refused to stop, get down or show his hands and continued charging. Officer  
11 Lafauci felt that he could not risk the possibility that Ligon had a gun or other weapon. Nor could  
12 he risk getting tackled and losing his gun, or having a fight for his gun. When Ligon was within  
13 10 to 15 feet, Officer Lafauci knew that he could not transition from his gun to a non-lethal  
14 weapon. Officer Lafauci continued to step backwards towards the rear of the patrol unit and fired  
15 at Ligon. Lafauci fired twelve shots, hitting Ligon eight times.

16 Ligon was taken to the hospital where his blood alcohol concentration ("BAC") was  
17 measured at 0.319%. His BAC was measured again by the Sunnyvale Police Department  
18 following a blood draw at 8:15 a.m. Ligon's BAC was 0.12% seven hours after the pursuit and  
19 shooting. Based on the rate of metabolism and fluid replacement following surgery, Ligon's BAC  
20 was at least 0.24%, but likely closer to 0.30% at the time of the incident. Ligon pled no contest to  
21 (1) felony evasion under California Vehicle Code section 2800.2(a); and (2) misdemeanor  
22 violation of California Vehicle Code section 23152(b) – DUI with BAC of 0.08%. In exchange  
23 for the plea, the Santa Clara County DA dropped the charge of violating Penal Code section 69 –  
24 using threats or violence to resist arrest or prevent an officer from performing his duties. Both the  
25 Sunnyvale Police and Santa Clara County DA found Officer Lafauci's use of force justified under  
26 the circumstances.

## POINTS OF LAW

### A. LEGAL STANDARD IN EXCESSIVE FORCE CASES

Claims of deadly excessive force are analyzed under the objective reasonableness standard of the Fourth Amendment. The reasonableness of a particular use of force is judged “from the perspective of a reasonable officer on the scene,” and “in light of the facts and circumstances confronting [him].” *Graham v. Connor*, 490 U.S. 386, 397 (1989). The Supreme Court has held that it is unreasonable to “seize an unarmed, non-dangerous suspect by shooting him.” *Id.* The Fourth Amendment prohibits police from using lethal force against a suspect who “poses no immediate threat to the officer and no threat to others. . . .” *Tennessee v. Garner*, 471 U.S. 1, 11, (1985). “[W]here the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so.” *Garner*, 471 U.S. at 11.

However, “[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others, it is not constitutionally unreasonable” to use deadly force. *Id.* The courts analyze the facts bearing on the threat posed with particular attention to “the severity of the crime at issue, whether the suspect pose[d] an immediate threat to the safety of the officers or others, and whether he . . . actively resist[ed] arrest or attempt[ed] to evade arrest by flight.” *Graham*, 490 U.S. at 396. In addition, the courts recognize that “police officers are often forced to make split-second judgments-in circumstances that are tense, uncertain, and rapidly evolving . . . .” *Billington v. Smith*, 292 F.3d 1177, 1184 (9th Cir. 2002) (quoting *Graham*, 490 U.S. at 396). “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight,” *Graham*, 490 U.S. at 396.

These legal principles are reflected in the Ninth Circuit Model jury instruction (9.22), which states:

Under the Fourth Amendment, a police officer may only use such force as is "objectively reasonable" under all of the circumstances. In other words, you must judge the reasonableness of a particular use of force from the perspective of a reasonable officer on the scene and not with the 20/20 vision of hindsight.

1 In determining whether the officer used excessive force in this case, consider all of the  
2 circumstances known to the officers on the scene, including:

- 3 1. The severity of the crime or other circumstances to which the officers were  
4 responding;
- 5 2. Whether the plaintiff posed an immediate threat to the safety of the officers or to  
6 others;
- 7 3. Whether the plaintiff was actively resisting arrest or attempting to evade arrest by  
8 flight;
- 9 4. The amount of time and any changing circumstances during which the officer had  
10 to determine the type and amount of force that appeared to be necessary;
- 11 5. The type and amount of force used;
- 12 6. The availability of alternative methods to subdue the plaintiff

13 **B. OFFICER LAFAUCI’S ACTIONS WERE OBJECTIVELY REASONABLE**

14 Applying the relevant case law and elements of the Model Jury Instruction, Officer  
15 Lafauci’s actions were objectively reasonable.

16 **1. Severity of the Crime**

17 Mr. Ligon admits that he drove in a willful or wanton disregard for the safety of persons  
18 when he attempted to evade the officers. He pled no contest to felony evasion and DUI. Ligon  
19 risked the lives of drivers on the freeway and streets of Sunnyvale, as well as patrons at the  
20 Denny’s and guests at the motel. Ligon’s actions made the officers think that he had a reason to  
21 run; something more than just the speeding infraction that started the pursuit. The officers are  
22 trained (and statistics show) that suspects that flee are usually wanted for serious misdemeanors  
23 or felonies. Ligon continued to raise suspicion and risk lives when he ran multiple stop signs in  
24 his own neighborhood around Ahwanee Ave.

25 **2. Immediate Threat to Officer Safety / Resisting Arrest**

26 Mr. Ligon abruptly pulled into a red zone on Alturas Ave. causing Officer Lafauci to stop  
27 his vehicle approximately 20 feet from the rear of Ligon’s car. Officer Lafauci drew his gun  
28 based on his “high risk stop” training, and because he could not risk the possibility that Ligon was  
armed. Ligon elevated the threat level by getting out of his car and yelling at Lafauci. Officer  
Lafauci instructed Ligon multiple times to “stop”, “show his hands” and “put his hands up.”

1 Lafauci and Walczak each testified that Ligon charged directly at Lafauci within a few seconds of  
2 exiting his car.

3 Percipient witness Brian Van Dyck was on his driveway about 100 feet away from the rear  
4 passenger side corner of the CHP car when the incident occurred. He testified that Ligon's hands  
5 were "down and in front of him" and that Ligon was "rapidly shuffling" and "running" in the  
6 direction of the SUV parked across from Officer Lafauci when the shots were fired. Based on  
7 Van Dyck's vantage point, and given the width of the street and relative positions of the CHP unit  
8 and SUV across the street, Van Dyck's testimony supports the officers' description of Ligon's  
9 path to Lafauci. Also, the fact that Lafauci had to yell his commands multiple times shows that  
10 Ligon was not complying.

### 11 **3. Time and Circumstances Affecting Force Decision / Alternatives Available**

12 According to every witness, this incident unfolded in a matter of seconds. It was well past  
13 1:00 a.m. and most of the street lighting was obscured by trees. Ligon pulled over to the curb and  
14 the officers parked 20 feet behind him. The officers were barely out of the car when Ligon got out  
15 of his car. It was so fast that Walczak did not have time to use the P.A. to give Ligon instructions.  
16 Walczak threw his radio down, began to draw his Taser and prepared for a foot chase. Within  
17 seconds of getting out, Ligon yelled and then charged Lafauci from about 20 feet away with his  
18 hands near his waistband. POST teaches the officers that concealed weapons are often kept in the  
19 waistband and based on his clothing, there was no other place for him to keep a weapon.

20 Mr. Ligon ignored Lafauci's commands to stop. Lafauci could not risk the possibility that  
21 Ligon had a gun or other weapon. Also, he could not risk getting tackled by Ligon, getting in a  
22 fight and losing his gun. Finally, based on Ligon's proximity and closing speed, Officer Lafauci  
23 knew that he could not transition from his gun to his Taser or other non-lethal weapon. Due to the  
24 threat posed by Mr. Ligon charging at him with his hands near his waistband, Officer Lafauci  
25 fired his weapon.

### 26 **4. Arguments Regarding Alleged "Failure to Warn"**

27 Plaintiff focuses on Lafauci's "failure" to give a warning that he was about to shoot; or  
28 switch from the firearm to a non-deadly weapon available to him: baton, Taser, or pepper spray.

1 POST requires a warning “if feasible” while Ninth Circuit cases state that a warning must be  
 2 given “whenever practicable” *Harris v. Roderick*, 126 F.3d 1189, 1201 (9th Cir. 1997), and  
 3 “when giving such a warning is plausible.” *Mattos v. Agarano*, 661 F.3d 433, 451 (9th Cir. 2011).  
 4 While it is true that “the totality of the circumstances” includes “the availability of less intrusive  
 5 alternatives to the force employed” and “whether proper warnings were given,” *Bryan v.*  
 6 *MacPherson*, 630 F.3d 805, 826 (9th Cir. 2010), those alternatives have to be available. Ligon  
 7 charged Officer Lafauci from fifteen feet away, thus it would be reasonable to focus on Mr.  
 8 Ligon’s hands first, rather than the warning.

9 Also, the Ninth Circuit has dispensed with the “least intrusive alternative” requirement  
 10 where there are exigent circumstances, because it “requires them to exercise superhuman  
 11 judgment”:

12 In the heat of battle with lives potentially in the balance, an officer would not be  
 13 able to rely on training and common sense to decide what would best accomplish  
 14 his mission. Instead, he would need to ascertain the least intrusive alternative (an  
 15 inherently subjective determination) and choose that option and that option only.  
 16 Imposing such a requirement would inevitably induce tentativeness by officers,  
 17 and thus deter police from protecting the public and themselves. It would also  
 18 entangle the courts in endless second-guessing of police decisions made under  
 19 stress and subject to the exigencies of the moment. Officers thus need not avail  
 20 themselves of the least intrusive means of responding to an exigent situation; they  
 21 need only act within that range of conduct we identify as reasonable.

22 *Scott v. Henrich*, 39 F.3d 912 (9th Cir. 1994).

23 The jury should apply these principles to Officer Lafauci’s split-second decision to fire. The  
 24 circumstances indicate that he had just a few seconds while Ligon closed the distance between  
 25 them.

### 26 **C. OFFICER LAFAUCI IS ENTITLED TO QUALIFIED IMMUNITY**

27 Qualified immunity serves to shield government officials “from liability for civil damages  
 28 insofar as their conduct does not violate clearly established statutory or constitutional rights of

1 which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102  
 2 S.Ct. 2727, 73 L.Ed.2d 396 (1982). In ruling on a qualified immunity defense, a court must  
 3 consider two questions. First, “[t]aken in the light most favorable to the party asserting the injury,  
 4 do the facts alleged show the officer’s conduct violated a constitutional right?” *Saucier v. Katz*,  
 5 533 U.S. 194, 201, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001). Second, an inquiry into whether the  
 6 plaintiff alleges a deprivation of a constitutional right and was that right clearly established.  
 7 *Saucier v. Katz*, 533 U.S. at 201, 121 S.Ct. 2151; *Sorrells v. McKee*, 290 F.3d 965, 969 (9th  
 8 Cir.2002). “The relevant, dispositive inquiry in determining whether a right is clearly established  
 9 is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation  
 10 he confronted.” *Saucier*, 533 U.S. at 202, 121 S.Ct. 2151.

11 Law enforcement officers are entitled to qualified immunity if they act reasonably under the  
 12 circumstances, even if the actions result in a constitutional violation. *Ramirez v. Butte–Silver Bow*  
 13 *County*, 298 F.3d 1022, 1027 (9th Cir.2002), cert. denied, 298 F.3d 1022 (9th Cir.2002). The  
 14 Supreme Court recognizes that “it is inevitable that law enforcement officials will in some cases  
 15 reasonably but mistakenly conclude that probable cause is present.” *Anderson v. Creighton*, 483  
 16 U.S. at 639. Put another way, the qualified immunity standard gives room for mistaken judgment  
 17 and protects all but the plainly incompetent or those who knowingly violate the law. *Hunter v.*  
 18 *Bryant*, 502 U.S. 224, 229 (1991).

19 Defendant Joe Lafauci is protected from plaintiff’s §1983 claims by the doctrine of  
 20 qualified immunity. Based on the Ninth Circuit Model Instructions and *Graham v. Connor*, 490  
 21 U.S. 386, Officer Lafauci’s actions were objectively reasonable. After failing to pull over as  
 22 directed, Mr. Ligon led the officers to a dark side street unfamiliar to the officers. He made an  
 23 abrupt stop and got out of his car without being instructed. When Officer Lafauci stopped behind  
 24 Ligon, he got out of the car and drew his gun in compliance with “High Risk Stop” procedures  
 25 taught by CHP and POST. Mr. Ligon yelled threats, refused Lafauci’s commands to put up his  
 26 hands, and within a few seconds of getting out of his car, charged directly at Lafauci at a speed  
 27 that gave Lafauci less than two seconds to decide whether to shoot. Based on the totality of the  
 28



1 circumstances, it was reasonable for Officer Lafauci to think that James Ligon posed a risk of  
2 serious physical harm.

3  
4 Dated: January 2, 2015

Respectfully Submitted,

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